



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2018-0684; FRL-10005-32-Region 2]

Approval and Promulgation of Implementation Plans; New York; Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standards in the New York Metropolitan Area Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) submitted by the State of New York for purposes of implementing Reasonably Available Control Technology (RACT) in the New York portion of the New York-Northern New Jersey-Long Island NY-NJ-CT nonattainment area (New York Metropolitan Area or NYMA) for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS) as it relates to major sources emitting oxides of nitrogen (NO_x), control technique guidelines (CTG) for sources of volatile organic compounds (VOCs), and non-CTG major sources of VOCs. In addition, the EPA is proposing to approve portions of the SIP revision submitted by New York to address the 2008 ozone NAAQS that certify that the State has satisfied the requirements for an enhanced vehicle Inspection and Maintenance Program, an emissions statement program, and a nonattainment new source review program. The EPA is also proposing to approve New York's RACT plan as it applies to the CTG for industrial cleaning solvents and to solvent metal cleaning processes. This action is being taken in accordance with the requirements of the Clean Air Act.

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R02-OAR-2018-0684 at <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Omar Hammad, Environmental Protection Agency, 290 Broadway, New York, New York 10007-1866, at (212) 637-3347, or by email at Hammad.Omar@epa.gov.

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I. What action is the EPA proposing?

The EPA is proposing to approve a (SIP) submitted by the State of New York on November 13, 2017 for purposes of implementing Reasonably Available Control Technology (RACT)¹ for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard) for the New York portion of the NYMA classified as moderate nonattainment. The State's November 2017 SIP submittal consists of a demonstration that New York meets the RACT requirements for the two precursors for ground-level ozone, i.e., NO_x and volatile organic compounds (VOCs), set forth by the Clean Air Act (CAA or Act) with respect to the 2008 8-hour ozone standard. The EPA is proposing to approve New York's November 2017 RACT SIP submittal as it applies to non-control technique guideline (non-CTG) major sources of VOCs, CTG sources of VOCs and to major sources of NO_x.

The EPA is also proposing to approve the following New York certifications that were submitted as part of SIP revisions to address the moderate area 2008 8-hour NAAQS. The certifications, that are applicable state-wide and therefore to the New York portion of NYMA, are: (1) that nonattainment new source review (NNSR) applies to NO_x and VOC emissions from

¹ The EPA has defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53762, September 17, 1979).

stationary sources; (2) that the State has satisfied the requirements for an enhanced vehicle Inspection and Maintenance Program; and (3) that the State has satisfied the requirements for an emissions statement program.

New York certified that there are no sources located in the State for the following six CTGs: Manufacture of Vegetable Oils; Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins; Natural Gas/Gasoline Processing Plants; Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry; Fiberglass Boat Manufacturing Materials; Agricultural Pesticides. The EPA is not proposing any action on this certification since we previously approved the State's negative declaration for these six CTGs. 82 FR 58342 (December 12, 2017); 40 CFR 52.1683 (a) and (b).

The EPA is proposing to approve New York's RACT plan as it applies to the CTG for industrial cleaning solvents. On December 12, 2017 (82 FR 58342), the EPA published a conditional approval of New York's state-wide RACT submittal, dated December 22, 2014, as supplemented on September 6, 2017, for purposes of satisfying the 2008 8-hour ozone standard RACT requirement as it applies to CTG requirements for VOC sources for industrial cleaning solvents. In its letter dated September 6, 2017, New York committed to adopt, by November 30, 2018, a revised Part 226 of Title 6 of the New York Codes, Rules and Regulations (6 NYCRR), entitled, "Solvent Metal Cleaning Processes," that will address the CTG for industrial cleaning solvents. In the conditional approval, EPA stated that if New York failed to meet its commitment within the one-year time period specified by CAA section 110(k)(4), the conditional approval will, by operation of law, become a disapproval. New York's response to the conditional approval was submitted to the EPA on November 5, 2019, approximately 11 months late, so the

conditional approval converted to a disapproval. The EPA is now proposing to approve New York's state-wide RACT submittal dated December 22, 2014, as supplemented on September 6, 2017 and November 5, 2019, for purposes of satisfying the 2008 8-hour ozone standard RACT requirement, as it applies to CTG requirements for VOC sources for industrial cleaning solvents.

The EPA is also proposing to approve New York's RACT plan as it applies to solvent cleaning processes. The EPA approved² New York's RACT plan for solvent metal cleaning processes under the 1-hour ozone standard and is now proposing to approve New York's revised and more stringent requirements as the RACT plan for solvent metal cleaning processes for the 2008 8-hour ozone standard.

II. What is the background for this proposed rulemaking?

In 2008, EPA revised the health-based NAAQS for ozone, setting it at 0.075 parts per million (ppm) averaged over an 8-hour time frame. The EPA determined that the revised 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors and individuals with a pre-existing respiratory disease such as asthma.

On April 30, 2012, the EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 2008 8-hour ozone standard. 77 FR 30087 (May 21, 2012). This action became effective on July 20, 2012. The two 8-hour ozone marginal nonattainment areas located in New York State are the New York portion of NYMA and the Jamestown nonattainment area. The remainder of New York State was designated as unclassifiable/attainment. The New York portion of the NYMA, is composed of the five

² Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision; 1-Hour Ozone Control Programs. (69 FR 3237, January 23, 2004).

boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester, Rockland and the Shinnecock Indian Nation.³ 40 CFR 81.333. The Jamestown nonattainment area is composed of Chautauqua County. In 2016, the EPA determined that Jamestown attained the 2008 ozone standard by the July 20, 2015 attainment date and that the NYMA nonattainment area did not attain the 2008 ozone standard by the applicable attainment date and was reclassified from a marginal to a moderate nonattainment area. 81 FR 26697 (May 4, 2016).⁴ State attainment plans for moderate nonattainment areas were due by January 1, 2017. 81 FR 26697. Jamestown remains classified as a marginal nonattainment area until the State submits a redesignation request⁵ to the EPA. Since the NYMA was reclassified to a moderate nonattainment area, New York, on November 13, 2017, submitted a new RACT determination as well as revisions related to the 2008 8-hour ozone moderate standard. This proposed action addresses New York's RACT determination and State certifications portions of New York's November 13, 2017, submittal for the New York portion of NYMA. The remaining portions of New York's attainment demonstration for the 2008 8-hour ozone standard, moderate

³ Information pertaining to areas of Indian country is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. The EPA lacks the authority to establish Indian country land status and makes no determination of Indian country boundaries at 77 FR 30087 (May 21, 2012).

⁴ In 2019 the NY-NJ-CT nonattainment area was reclassified to serious nonattainment. 84 FR 44238 (August 23, 2019). The serious area attainment date and the deadline for RACT measures not tied to attainment is July 20, 2021. 84 FR 44238.

⁵ EPA's determination of attainment does not constitute a redesignation to attainment. Redesignation requires states to meet a number of additional statutory criteria, including the EPA approval of a state plan demonstrating maintenance of the air quality standard for 10 years after redesignation. (81 FR 26697 at 26701; May 4, 2016). On October 2, 2018 (83 FR 49492), the EPA made a final determination that the Jamestown Area has attained the 2008 8-hour ozone NAAQS based upon complete, quality-assured, and certified ambient air monitoring data that shows the Area has monitored attainment of the 2008 8-hour ozone NAAQS for both the 2012-2014 and 2015-2017 monitoring periods. This final action does not constitute a redesignation to attainment. The Jamestown area will remain nonattainment for the 2008 8-hour ozone standard until such time as EPA determines that the Jamestown area meets the CAA requirements for designation to attainment, including an approved maintenance plan.

designation, for the New York portion of NYMA will be addressed in a separate rulemaking action.

The counties in the New York portion of NYMA (and part of Orange County) were previously classified under the 1979 1-hour ozone NAAQS as severe, requiring RACT, while the remaining counties in the State were subject to RACT as part of the moderate classification or as part of the Ozone Transport Region (OTR).⁶ Under the 2008 8-hour ozone standard, in areas classified as moderate or located in the OTR (which includes all of New York State), a RACT determination is required for major stationary sources that emit or have the potential to emit 50 tons per year for VOC and 100 tons per year for NO_x. As required by the anti-backsliding provisions of the CAA, for purposes of the RACT analysis for the 2008 ozone standard, New York retained the 1-hour ozone plan emission threshold of 25 tons per year or more for either NO_x or VOC for major sources in the New York portion of NYMA and portions of Orange County that were classified as severe under the 1979 1-hour standard.

Sections 172(c)(1) and 182(b)(2) of the CAA require states to implement RACT in areas classified as moderate (and higher) nonattainment for ozone, while section 184(b)(1)(B) of the CAA requires VOC RACT in states located in the OTR and section 182(f) requires NO_x RACT be adopted in the OTR. These areas are required to implement RACT for all major VOC and NO_x emission sources and for all sources covered by a CTG. A CTG is a document issued by the EPA which establishes a “presumptive norm” for RACT for a specific VOC source category. A related set of documents, Alternative Control Techniques (ACT) documents, exists primarily for

⁶ CAA section 184(a) established a single ozone transport region (OTR) comprising all or part of 12 eastern states and the District of Columbia.

NO_x control requirements. States must submit rules, or negative declarations when the State has no such sources, for CTG source categories, but not for sources in ACT categories. However, RACT must be imposed on major sources of NO_x, and some of those major sources may be within a sector covered by an ACT document.

On March 6, 2015 (80 FR 12264), the EPA published a final rule that outlines the obligations that areas found to be in nonattainment of the 2008 ozone NAAQS need to address. This rule, herein referred to as the “2008 ozone implementation rule,” contains, among other things, a description of the EPA’s expectations for states with RACT obligations. The 2008 ozone implementation rule provides that states could meet RACT through the establishment of new or more stringent requirements that meet RACT control levels, through a certification that previously adopted RACT controls in the SIP, that were approved by the EPA under a prior ozone NAAQS, represent adequate RACT control levels for attainment of the 2008 ozone NAAQS, or a combination of these two approaches. In addition, a state must submit a negative declaration in instances where there are no CTG sources. The 2008 ozone implementation rule requires that states with nonattainment areas were required to submit RACT SIPs to EPA within two years from the effective date of nonattainment designation or by July 20, 2014.

III. What did New York submit?

On November 13, 2017, the New York Department of Environmental Conservation

(NYSDEC or New York) submitted to the EPA a formal revision to its SIP.⁷ The SIP revision consists of information documenting how New York complied with the RACT requirements and the elements of an attainment demonstration for the 2008 8-hour ozone NAAQS for the New York portion of NYMA classified as moderate nonattainment.⁸ In its November 2017 RACT submittal, New York certifies that the State's submittal addresses the RACT requirements for the 2008 8-hour ozone standard, with the exception of the CTG for industrial cleaning solvents and for the 2016 oil and natural gas industry CTG. In New York's December 2014 state-wide RACT submittal, as supplemented on September 6, 2017, the State committed to revise 6 NYCRR Part 226, "Solvent Metal Cleaning Processes," and to fulfill that commitment by no later than November 30, 2018. New York supplemented the RACT submittal on November 5, 2019, with a revised version of 6 NYCRR Part 226, to address the CTG for industrial cleaning solvents. In addition, in New York's November 2017 RACT SIP submittal, the State commits to adopting a new regulation to address EPA's CTG for the oil and natural gas industry (EPA-453/B-16-001, October 20, 2016).

New York's November 2017 RACT submittal states that it evaluated its existing RACT regulations, used in its December 2014 state-wide RACT determination to meet the 1997 8-hour ozone standard, to ascertain whether the same regulations constitute RACT for the 2008 8-hour ozone standard. In making its new 8-hour ozone RACT determination, New York relied on

⁷ The submittal is entitled "New York State Implementation Plan for the 2008 Ozone National Ambient Air Quality Standard, Reasonably Available Control Technology Demonstration for the New York Metropolitan Area Moderated Nonattainment Area, final proposed revision, November 2017."

⁸ New York, in its November 2017 submittal, requests that EPA reclassify the NYMA to serious nonattainment to allow New York, New Jersey and Connecticut adequate time to develop complete SIPs that forecast attainment in the NYMA by the serious area deadline of July 20, 2021. Effective September 23, 2019, EPA reclassified the NYMA to serious nonattainment, giving each state until July 20, 2021 to achieve the 2008 ozone standard. 84 FR 44238 (Aug. 23, 2019).

EPA's RACT Question and Answer document (May 18, 2006) and the most recent emission control technology and cost evaluations to determine what constitutes technically and economically feasible controls for specific sources. Accordingly, the basic framework for New York's November 2017 RACT SIP determination for the New York portion of NYMA moderate nonattainment area is described as follows:

- Identify all source categories covered by CTG and ACT documents.
- Identify applicable regulations that implement RACT.
- Certify that the existing level of controls for the 1997 8-hour ozone standard equals RACT under the 2008 8-hour ozone standard in certain cases.
- Declare which sources covered by a CTG and ACT do not exist within the state and/or that RACT is not applicable in certain cases.
- Identify and evaluate applicability of RACT to individual sources whose source category does not have a presumptive emission limit covered by a state-wide regulation.
- Identify potential RACT revisions.
- Identify statewide applicability of nonattainment new source review (NNSR).

New York states that its November 2017 RACT SIP submittal for the New York portion of NYMA moderate nonattainment area supports the primary findings of the December 2014 state-wide RACT SIP: namely, that New York State (and therefore the New York portion of the NYMA) has fulfilled the CAA obligations for RACT in a moderate nonattainment area, with the exception of the industrial cleaning solvents CTG, issued by the EPA in September 2006, for

which New York has since finalized a rulemaking to include those requirements in Part 226.⁹ In addition, in the November 2017 submittal, New York notes that it intends to adopt and implement the 2016 oil and natural gas industry CTG and that sources subject to the CTG will be regulated through a new rule that is not yet adopted. New York certified that the RACT requirements for the 2008 8-hour ozone NAAQS for the New York portion of NYMA moderate nonattainment area have been satisfied and are consistent with the most recent control technology and economic considerations. The following discusses the results of New York's analysis of RACT under the basic framework identified above.

CTGs and ACTs

New York reviewed its existing RACT regulations adopted under the 1979 1-hour and 1997 8-hour ozone standard to identify source categories covered by the EPA's CTG and ACT documents. New York's RACT SIP submittal lists the CTG and ACT documents and corresponding State RACT regulations that cover the CTG and ACT sources included in New York's emissions inventory. For non-CTG major sources, 6 NYCRR Part 212, "General Process Emission Sources," regulates RACT compliance for VOC and NO_x. Major sources of NO_x are regulated by 6 NYCRR Part 227-2, "Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen (NO_x)." In its November 2017 SIP submittal, New York certified that major non-CTG sources are covered by the Part 212 RACT regulation.

Except as noted, New York has implemented RACT controls state-wide for all CTGs that the

⁹ New York adopted Part 226 with an effective date of November 1, 2019.

EPA had issued as of October 2016. The following table lists the RACT controls that have been promulgated in 6 NYCRR and the corresponding EPA SIP approval dates.

NY Regulation	Title	EPA approval date
Part 205	Architectural and Industrial Maintenance Coatings	12/13/04, 69 FR 72118
Part 211	General Prohibitions	7/12/13, 78 FR 41846
Part 212	General Process Emission Sources	7/12/13, 78 FR 41486
Part 214	Byproduct Coke Oven Batteries	7/20/06, 71 FR 41163
Part 216	Iron and/or Steel Processes	7/20/06, 71 FR 41163
Part 220	Portland Cement and Glass Plants	7/12/13, 78 FR 41486
Part 223	Petroleum Refineries	7/19/85, 50 FR 29382
Part 224	Sulfuric and Nitric Acid Plants	7/19/85, 50 FR 29382
Part 226	Solvent Metal Cleaning Processes	1/23/04, 69 FR 3237
Part 227-2	RACT for Oxides of Nitrogen (NOx)	7/12/13, 78 FR 41486
Part 228	Surface Coating Processes	3/04/14, 79 FR 12084
Part 229	Petroleum and Volatile Organic Liquid Storage and Transfer	12/23/97, 62 FR 67006
Part 230	Gasoline Dispensing Sites and Transport Vehicles	4/30/98, 63 FR 23668
Part 232	Dry Cleaning	6/17/85, 50 FR 25079
Part 233	Pharmaceutical and Cosmetic Processes	12/23/97, 62 FR 67006
Part 234	Graphic Arts	3/08/12, 77 FR 13974
Part 236	Synthetic Organic Chemical Manufacturing Facility Component Leaks	7/27/93, 58 FR 40059

New York's November 2017 RACT submittal also contains a table (see Appendix A: Control Technique Guidelines and Alternative Control Techniques Documents) listing all the CTG and ACT categories and the corresponding State regulations or negative declarations that address the requirements. The EPA previously approved and incorporated into the SIP the State's regulations identified in Appendix A that address ACTs and CTGs.

For some source categories, the SIP-approved New York rules have more stringent emission limits and/or lower thresholds of applicability than the recommendations contained in the CTG and ACT documents. In its submittal, New York identified categories where controls may be more stringent than the recommended levels contained in the CTG and ACT documents. For example, Part 228, “Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers,” Part 234, “Graphic Arts,” Part 241, “Asphalt Pavement and Asphalt Based Surface Coatings,” and Part 227-2, “Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen (NO_x)” have each been adopted by the State with more stringent limits or applicability than what was recommended by the corresponding CTG or ACT. New York certifies that its SIP-approved regulations meet the RACT requirements for the New York portion of NYMA moderate nonattainment area for the 2008 8-hour ozone standard.

Solvent Cleaning Processes

On November 5, 2019, the State submitted a revised 6 NYCRR Part 226, “Solvent Cleaning Processes and Industrial Cleaning Solvents.” The prior 6 NYCRR 226 has been re-numbered as 6 NYCRR Subpart 226-1 and renamed “Solvent Cleaning Processes” from “Solvent Metal Cleaning Processes” to accommodate the addition of a new rule, 6 NYCRR 226-2, “Industrial Cleaning Solvents.” Attendant changes have been made to 6 NYCRR 201, “Permit and Certificates,” and those will be reviewed for potential rule making action in the future.

Solvent Cleaning Processes 6 NYCRR 226-1

Subpart 226-1 applies to all owners or operators of facilities who operate cold cleaners (including remote reservoir cold cleaning machines), open-top vapor degreasers, and all types of conveyORIZED degreasers that carry out solvent cleaning processes of metal objects using a solution containing VOCs. After December 1, 2020, Subpart 226-1 expands applicability to include such cleaning of non-metal objects. Subpart 226-1 also changes the current cold cleaning requirement of using a solvent with a maximum vapor pressure of 1.0 mm Hg, or less, at 20 degrees Celsius, to using a cleaner with no more than twenty-five (25) grams of VOC per liter (25g/l) of cleaning solution. These revisions, and the inclusion of non-metal objects, make the proposed regulation more stringent than the previously approved regulation.

CTG for Industrial Cleaning Solvents

In New York's December 2014 state-wide RACT submittal, as supplemented on September 6, 2017, the State committed to revise 6 NYCRR Part 226, "Solvent Metal Cleaning Processes," and to fulfill that requirement by no later than November 30, 2018. On November 5, 2019, New York submitted the revised 6 NYCRR Part 226 for inclusion into the SIP to address requirements regarding the CTG for industrial cleaning solvents that were identified in the EPA's conditional approval. 82 FR 58342 (December 12, 2017).

The EPA issued a CTG for industrial cleaning solvents in 2006. This category includes the industrial cleaning solvents used by many industries to remove contaminants such as adhesives, inks, paint, dirt, soil, oil and grease. The recommended measures for controlling VOC emissions from the use, storage and disposal of industrial cleaning solvents include work practice

standards, limitations on VOC content of the cleaning materials, and an optional alternative limit on composite vapor pressure of the cleaning materials. They also include the use of add-on controls with an overall emission reduction of at least 85 percent by mass.

Based on the EPA's CTG, New York revised 6 NYCRR Part 226, "Solvent Metal Cleaning Processes," and added a new Subpart, Subpart 226-2 "Industrial Cleaning Solvents" which specifies VOC content and vapor pressure limits for solvents used in solvent cleaning of foreign materials from surfaces of unit operations such as large and small manufactured components, parts, equipment, floors, tanks, and vessels. The facility applicability threshold is in line with the CTG, actual emissions of (3) tons per year or more of VOC's from industrial cleaning solvents on a 12-month rolling total basis. Compliance is achieved by implementing the listed work practices and meeting a maximum VOC content, or a maximum VOC composite vapor pressure. Recordkeeping must be maintained which demonstrates compliance. The EPA proposes to find that New York's adopted industrial cleaning solvents rule is as effective in regulating the source category as the EPA's CTG document. Therefore, the EPA is proposing to approve the revisions to 6 NYCRR Part 226, "Solvent Cleaning Processes and Industrial Cleaning Solvents" which includes Subpart 226-2 "Industrial Cleaning Solvents."

Source Categories Not Applicable in New York State

In New York's November 2017 RACT SIP for the New York portion of NYMA, the State certified that there are no sources in New York State (and therefore the New York portion of the NYMA) for six CTGs. This certification results from a review of the State's emission inventory

and emission statements. The CTGs for which the negative declaration applies are as follows: Manufacture of Vegetable Oils; Manufacture of High-Density Polyethylene, Polypropylene and Polystyrene Resins; Natural Gas/Gasoline Processing Plants; Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry; Fiberglass Boat Manufacturing Materials; Agricultural Pesticides. In New York's December 2014 statewide RACT SIP, the State also certified that there were no sources in the State for these same six CTGs. New York previously certified to the satisfaction of the EPA (40 CFR 52.1683(a) and (b)) that there are no sources for these six CTGs in New York State (and therefore the New York portion of the NYMA). The EPA is not proposing any action on this certification since we previously approved the State's negative declaration for these six CTGs. See December 12, 2017 (82 FR 58342) and 40 CFR 52.1683 (a) and (b).

Source-Specific RACT Determinations

The 8-hour ozone RACT analysis must address source-specific RACT as it applies to a single regulated entity. A source-specific RACT determination applies to sources that have obtained a facility-specific emission limit or an alternative emission limit, i.e., a variance. A case-by-case RACT analysis is required for sources that are not defined by a specific source category covered by an existing state regulation, that are requesting a variance, or that are not addressed by a CTG. New York's RACT guidance entitled, "DAR-20 Economic and Technical Analysis for Reasonably Available Control Technology (RACT)" outlines the process and conditions for granting source-specific RACT determinations. Under the CAA, these individual source-specific RACT determinations need to be submitted by the State as a SIP revision for the EPA's

approval. Therefore, New York included in Appendix B of its November 2017 RACT SIP submittal a listing of VOC and NO_x source facilities that are subject to a RACT source-specific SIP revision under the 8-hour ozone SIP and corresponding emission limits, technology and the applicable regulation governing the RACT determinations. In September 2008, August 2010, December 2013, and August 2015, New York submitted to the EPA SIP revisions that included most of the source-specific RACT revisions identified in Appendix B of the RACT SIP submittals. The EPA is performing its technical review of those submittals and will take separate rulemaking actions for each of the source-specific determinations.

In addition, in accordance with New York's NO_x RACT regulation, Part 227-2, owners of combined cycle combustion turbines are required to perform case-by-case RACT determinations that may result in more stringent emission limits. This RACT requirement was approved into the SIP. 78 FR 41846 (July 12, 2013).

Additional Control Measures Needed for Attainment

In New York's December 22, 2014 state-wide RACT SIP submittal, included in the docket for this action, the State's response to comments stated that "once the NYMA is reclassified as 'moderate' nonattainment for the 2008 ozone NAAQS and an attainment SIP is required, DEC [New York] will undertake a review of its many NO_x control options to determine which would most efficiently and effectively reduce emission in the New York portion of NYMA."

As part of the State's November 13, 2017 SIP submittal, New York has included an attainment

demonstration for the New York portion of NYMA moderate nonattainment area for the 2008 ozone NAAQS. In the State's November 2017 SIP submittal letter, New York stated that the NYMA is unable to reach attainment of the 2008 ozone NAAQS by the statutory deadline of July 20, 2018. The State requested that the EPA issue an expeditious reclassification to serious nonattainment so that New York, New Jersey, and Connecticut have adequate time to develop complete SIPs that forecast attainment in the NYMA by the serious area deadline of July 20, 2021. On August 23, 2019 (84 FR 44238), the EPA announced, among other things, the reclassification of the NYMA from a moderate nonattainment area a serious nonattainment area.¹⁰ The NYMA serious nonattainment area must attain the standards by July 20, 2021.

As stated in our final action on New York's December 2014 state-wide RACT SIP, published December 12, 2017 (82 FR 58342), New York could quantify potential reductions for the following NO_x control options. It should be noted that New York has initiated the regulatory process toward adoption of regulations for some of the source categories addressed in the December 2017 final rule including lowering NO_x or VOC emissions standards for Municipal Waste Combustors, Simple Cycle Combustion Turbines operating as "peakers," and Distributed Generators. The State's September 2018 SIP submittal¹¹ addressing interstate transport confirms that New York has progressed, in various stages of the rulemaking process, toward regulating these sources, as well as other source categories emitting either NO_x or VOCs. EPA encourages

¹⁰ On August 23, 2019, the EPA published a document in the Federal Register (84 FR 44238) finalizing the reclassification of the New York-North New Jersey-Long Island, New York-New Jersey-Connecticut nonattainment area from moderate to serious.

¹¹ See page 3 at https://www.dec.ny.gov/docs/air_pdf/sipprop2008o3trans.pdf

New York to finalize these additional regulations and to explain why they are or are not considered RACT based on economic and technological feasibility.

In addition, considering that in November 2017 New York requested that EPA reclassify the NYMA from moderate to serious nonattainment for the 2008 ozone standard, EPA strongly encourages New York to adopt new regulations for controlling NO_x emissions at least as stringent as those adopted in the states of Connecticut and New Jersey for municipal waste combustors, simple cycle combustion turbines (“peakers”) operating during high electric demand days (HEDD), and distributed generators. Adoption of such regulations would provide additional NO_x reductions that will help attain the 2008 ozone standard in the NYMA. Further details are discussed in the following sections.

Municipal Waste Combustors

During the public comment period on New York’s 2008 ozone RACT proposal a comment was submitted to the State proposing that Municipal Waste Combustors (MWCs) in the New York portion of NYMA should be controlled to at least the RACT level. In its response to the comment, New York estimated that potential NO_x reductions of 1.50 and 1.75 tons per day could be obtained from MWCs located in the New York portion of NYMA. In New York’s response, the State also indicated that once the NYMA is classified as moderate the State would undertake a review of its many control options to determine which would most effectively and efficiently reduce emissions in the New York portion of NYMA.

As stated previously, the NYMA was reclassified as a moderate nonattainment area effective June 2016. New York's neighboring states of New Jersey and Connecticut have adopted NO_x emission limits for MWCs that are more stringent than New York's current permitted limits. The EPA has approved New Jersey's and Connecticut's revised NO_x limits into the SIP.¹² The SIP approved NO_x limit for MWCs in New Jersey and Connecticut¹³ is 150 parts per million (ppmvd).¹⁴ New York regulates MWCs under Part 219 (Incinerators) and Part 200 (General Provisions). EPA notes that on September 25, 2019, New York announced proposed changes to 6 NYCRR Subpart 219, "Incinerators," which, among other things, would limit oxides of nitrogen emissions from municipal waste combustion units.¹⁵ Inclusion in the SIP of more stringent NO_x emission limits for MWCs located in the New York portion of NYMA would provide additional NO_x reductions to help attain the 2008 ozone NAAQS.

Simple Cycle Combustion Turbines (firing distillate oil or more than one fuel) – also called “peakers”

New York's NO_x RACT regulation at Part 227-2 established NO_x emission limits of 100 ppmvd¹⁶ for simple cycle combustion turbines firing distillate oil or more than one fuel. New York's neighboring state of Connecticut¹⁷ has adopted more stringent NO_x emission limits of 50-75 ppm with a compliance date of June 2018 and 40-50 ppm with a compliance date of June

¹² For New Jersey, see 75 FR 80340 (December 22, 2010); for Connecticut, see 82 FR 35454 (July 31, 2017).

¹³ In Connecticut, the 150 ppmvd limit is for “mass burn waterwall combustors.”

¹⁴ As measured on a dry volume basis and corrected to 7% oxygen.

¹⁵ On September 25, 2019, New York announced a proposed rule, 6 NYCRR Subpart 219, “Incinerators” The proposed rule is to limit oxides of nitrogen emissions from municipal waste combustion units. The public comment period ended on December 11, 2019.

¹⁶ Corrected to 15% oxygen.

¹⁷ For Connecticut, see 82 FR 35454 (July 31, 2017)

2023 for this source category. New Jersey has also adopted more stringent NO_x emission limits of 42 ppm.¹⁸ On December 31, 2019, New York announced an approved rule, 6 NYCRR Subpart 227-3, “Ozone Season Oxides of Nitrogen (NO_x) Emission Limits for Simple Cycle and Regenerative Combustion Turbines.”¹⁹ Many of the units addressed by New York’s approved rule are peaking units located in the New York portion of NYMA; these units generally have either no or low-level NO_x emission controls and typically operate during periods of elevated temperature when electric demand increases, and ozone nonattainment areas see ozone levels rise to unhealthy levels. The EPA will fully assess New York’s recently adopted Subpart 227-3 for approvability once the rule is submitted to EPA for inclusion into the New York SIP. Inclusion into the SIP of more stringent NO_x emission limits for simple cycle turbines located throughout the State, and particularly in the New York portion of NYMA, would provide additional NO_x reductions to help attain the 2008 ozone NAAQS.

NYCRR Part 222 for Distributed Generation (DG)

New York has undertaken the regulatory process to adopt 6 NYCRR Part 222 for DG to address NO_x emissions from electric generating units during high electric demand days. New York’s

¹⁸ 42 ppm is equivalent to 1.6 lb/megawatt-hour which is the limit at Table 7 of New Jersey’s NO_x RACT regulation, Subchapter 19. Subchapter 19 at Table 7 notes that the limit is applicable to high electric demand day (HEDD) units or a stationary combustion turbine that is capable of generating 15 MW or more and that commenced operation on or after May 1, 2005. In accordance with Subchapter 19 definitions, units that commence operation on or after May 1, 2005 are neither HEDD nor non-HEDD units.

¹⁹ On December 31, 2019, New York announced an approved rule, 6 NYCRR Subpart 227-3, “Ozone Season Oxides of Nitrogen (NO_x) Emission Limits for Simple Cycle and Regenerative Combustion Turbines.” These controls are for “peaking” combustion turbines operating on high electric demand days. See <https://www.dos.ny.gov/info/register/2019/dec31.pdf>

neighboring states of Connecticut and New Jersey have adopted regulations²⁰ for controlling NO_x emissions from DG sources, and New Jersey's DG provisions are approved into the SIP. EPA encourages New York to submit Part 222 as a SIP revision²¹ for EPA approval as soon as possible after completion of the regulatory process.

Other New York Certifications

As part of New York's 2008 ozone attainment demonstration for the New York portion of NYMA moderate nonattainment area the State has certified that the following previously-approved SIP elements remain adequate, and no revisions to the state plan are necessary.

State-wide nonattainment new source review (NNSR)

New York affirms in its November 2017 RACT submittal that, since the State is located entirely in the OTR, regardless of the area's designation status, NNSR applies state-wide for emissions of ozone precursor pollutants, VOC and NO_x, for new major facilities or modifications to existing major or minor sources. New major facilities or modification to existing major or minor facilities in New York State are subject to the provisions of 6 NYCRR Part 231,²² "New Source Review for New and Modified Facilities." Major-source pollutant thresholds are lower in the NYMA, however, due to the area's former severe classification under the 1-hour ozone NAAQS: 25 tons

²⁰ For Connecticut see DG regulation at 22a-174-42; For New Jersey see Subchapter 19 at section 19.8(e)(1), (2) and (4). The EPA approved Subchapter 19 on December 22, 2010 (75 FR 80340).

²¹ On September 4, 2019, New York announced a proposed rule, 6 NYCRR Subpart 222, "Distributed Generation Sources" The proposed rule is to replace the rule adopted on November 1, 2016. The new rule would apply to demand response and price-responsive generation sources located in the NYC metropolitan area. The public comment period ended on November 25, 2019.

²² The EPA approved Part 231 on December 27, 2016 (81 FR 95049).

per year for VOC or NO_x, as opposed to 50 to 100 tons, respectively, throughout the rest of the state. The NYMA also has a lower significant source project threshold and significant net emission increase threshold, as well as a more stringent offset ratio for both precursors.

NNSR requires the application of Lowest Achievable Emission Rate (LAER) which is more stringent than RACT. Furthermore, New York certifies in its November 2017 submittal that the State also relies upon federal rules such as the National Emission Standards for Hazardous Air Pollutants (NESHAPs) regulated under CAA section 112. NESHAPs establish MACT which may be more stringent than RACT to control hazardous air pollutants.

The EPA is proposing to approve New York's certification that NNSR applies state-wide for NO_x and VOC emissions from stationary sources and fully meets the requirements of the CAA for the 2008 8-hour ozone NAAQS.

Vehicle Inspection and Maintenance (I/M)

New York certifies that it has implemented an approved state-wide, enhanced motor vehicle I/M program under 6 NYCRR Part 217-6 and 15 NYCRR Part 79 to limit ozone precursor emissions from motor vehicles.²³ The current New York Vehicle Inspection Program (NYVIP2) requires an appropriate emissions inspection (e.g., onboard diagnostic (OBDII) or low enhanced inspection) for most vehicles annually and with changes of vehicle ownership. The emissions inspection is determined by vehicle motor year, gross vehicle weight rating (GVWR), fuel type, and

²³ The EPA approved NYCRR Part 217-6 and 15 NYCRR Part 79 on February 28, 2012 (77 FR 11742).

registration class.

Therefore, the EPA is proposing to approve New York's certification that the previously-approved SIP element for the State's enhanced vehicle I/M program remain adequate and fully meet the requirements of the CAA for moderate classification of the 2008 8-hour ozone NAAQS.

Emission Statements

New York certifies that the emission statement requirement of CAA section 182(a)(3)(b) is fully addressed through 6 NYCRR Subpart 202-2²⁴ that is applicable state-wide. Therefore, the EPA is proposing to approve New York's emission statement certification that the previously-approved SIP element fully meets the requirements of the CAA for moderate classification of the 2008 8-hour ozone NAAQS.

Other New York Certifications

New York certifies that NO_x and VOC RACT requirements, which are discussed elsewhere in this proposal, are fully addressed. New York also certifies that the State's Emission Inventory requirements are fully addressed through the submission of the 2011 baseline inventory. The EPA is not taking action on the Emissions Inventory certification at the current time but will do so in the future.

²⁴ The EPA approved 6 NYCRR Subpart 202-2 on October 31, 2007 (72 FR 61530).

IV. What is the EPA's evaluation of New York's SIP submittal?

New York submitted a RACT assessment and an attainment demonstration the 2008 ozone moderate nonattainment standard for the New York portion of NYMA and for New York State as part of the OTR.

The EPA is proposing to approve New York's state-wide RACT submittal dated December 22, 2014, as supplemented on September 6, 2017 and November 5, 2019, for purposes of satisfying the 2008 8-hour ozone standard RACT requirement, as it applies to CTG requirements for sources of VOC, including industrial cleaning solvents. The EPA is proposing to approve the revisions to 6 NYCRR Part 226, "Solvent Cleaning Processes and Industrial Cleaning Solvents," with a State effective date of November 1, 2019.

The EPA is proposing to approve New York's November 13, 2017 SIP submittal as it applies to non-CTG major sources of VOCs, all CTG sources of VOCs, other than the 2016 oil and natural gas CTG, and to major sources of NO_x.

The EPA is also proposing to approve New York's state-wide certifications applicable to the New York portion of NYMA moderate nonattainment area for: (1) nonattainment new source review; (2) vehicle I/M program; and (3) emission statements.

The EPA is soliciting public comments on the issues discussed in this proposal. These comments will be considered before the EPA takes final action. Interested parties may participate in the

federal rulemaking procedure by submitting written comments as discussed in the ADDRESSES section of this rulemaking.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993), and 13563 (76 FR 382, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempt under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking action, pertaining to New York's 2008 8-hour ozone RACT submission, is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose any substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental

relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: January 28, 2020. Peter D. Lopez,
Regional Administrator,
Region 2.

[FR Doc. 2020-02819 Filed: 2/12/2020 8:45 am; Publication Date: 2/13/2020]